SINGAPORE REPORT

RAJAPAKSHA v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) June 20, 1973]
[Singapore — Magistrate's Appeal No. 159 of 1972]

Criminal Law and Procedure — Charge — Using abusive words — Minor Offences Act (Cap. 102), s. 14(f).

The appellant was convicted under the Minor Offences Act on the following charge:

"You D.E.B. Rajapaksha that you on 14.7.71 at about 10 a.m. at High Street, Singapore did use abusive words to one K.M. Oli Mohamed and that you have thereby committed an offence under section 14(f) Chapter 102, 1970 Ed".

Held, allowing the appeal: (1) the charge was bad as the essential ingredient of the charge was not contained in it;

(2) merely using abusive words is not an offence under any law so that an accused person must be charged under that particular subsection of the Minor Offences Act with either using abusive words with intent to provoke a breach of the peace or if it was a case where the abusive words were such whereby they were likely to cause provocation, those words must be in the charge.

MAGISTRATE'S APPEAL.

S. K. Isaac for the appellant.

M. P. D. Nair (on authorisation by the Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): This is quite obviously a case where no re-trial ought to be ordered; the charge is bad and the essential ingredient of the charge is not contained in it. Merely using abusive words is not an offence under any law so that an accused person must be charged under that particular subsection of the Minor Offences Act with either using abusive words with intent to provoke a breach of the peace or if it is a case where the abusive words are such whereby they are likely to cause provocation, those words must be in the charge and as had happened in this case the appellant had been convicted of using abusive words then that is not an offence known to our law.

It is said that there ought to be a re-trial. Looking at the nature of the evidence in this case and the use of the words complained of in the circumstances in which they arose it is not a fit case where a re-trial ought to be ordered and therefore the appeal is allowed, the conviction quashed and the fine to be refunded.

Appeal allowed.

Solicitors: *Ironside & de Souza; M. P. D. Nair.*

GOH LENG KWANG v. TENG SWEE LIN & ORS.

[C.A. (Wee Chong Jin C.J., Chua & Tan Ah Tah JJ.) May 28, 1974]
[Singapore — Civil Appeal No. 10 of 1973]

Practice and Procedure — Appeal — Trial judge's assessing credibility — Questions of fact — Whether Court of Appeal to disturb findings.

Land Law — Adverse possession — Action for declaration of rights of subsequent purchaser with notice — Oral testimony of witnesses — Credibility.

The plaintiff-respondents purchased two adjacent pieces of land, the first on 8.8.67 and the second on 29.12.70. On 28.8.70 the defendant-appellant made a statutory declaration asserting a squatter's title to a substantial portion of the second piece of land and a small part of the first piece of land. The defendant-appellant in his statutory declaration declared that he had been in full free and undisturbed possession and had paid no ground rent to anyone since his occupation of the land he claimed since 1953. The plaintiff-respondents had notice of the defendant's claim. They commenced an action against the defendant claiming a declaration that they were entitled to possession of the portions of land over which the defendant claimed a squatter's title. The case turned entirely on questions of fact on which there was a direct conflict of oral testimony. The trial judge accepted the evidence of the plaintiffs' witnesses and found as a fact that the defendant had trespassed in 1968 into the two pieces of land and not as he had claimed in 1953.

The defendant appealed on grounds that the trial judge erred in rejecting the evidence of the defendant and his witnesses and accepting the evidence of the plaintiffs' witnesses.

Held: (1) a Court of Appeal will not normally disturb the findings of a trial judge based on oral testimony;

(2) as the trial judge clearly considered the evidence of the witnesses and formed his opinion on their credibility or otherwise, the Court of Appeal was unable to say that on all the evidence before him and having regard to his assessment of the witnesses and evaluation of their evidence that the trial judge's crucial findings of fact were wrong;

(3) in the final analysis, it was for the trial judge to balance the probabilities and to evaluate the weight of evidence on either side and it was not for the Court of Appeal to do so.

Cases referred to:-

(1) *Khoo Sit Hoh* v. *Lim Thean Tong* [1912] A.C. 323.

(2) *Powell and Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

COURT OF APPEAL.

Michael Kempster Q.C. (*Harry Wee* with him) for the appellant.

A. J. Balcombe Q.C. (*Lai Kew Chai* with him) for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): The plaintiffs who are the respondents in this appeal, are the owners of two adjacent pieces of land known as Lot 249 and Lot 250 of Town Subdivision XXI. They had purchased Lot 250 first on 8th August 1967 and Lot 249 subsequently on 29th December 1970. Lot 249 has an area of 11,603 square feet and Lot 250 an area of 14,776 square feet. Adjoining Lots 249 and 250 but on higher ground is Lot 260 on which stands a Chinese school.

On 28th August 1970 the defendant who is the appellant, made a statutory declaration which he caused to be registered in the Registry of Deeds asserting what may conveniently be described as a squatter's title to a substantial portion of Lot 249 and a small portion of Lot 250. Annexed to the statutory declaration is a survey plan of Lots 249 and 250 in which is delineated the portions so claimed by the defendant. In his statutory declaration the defendant declares that he has been in full free and undisputed possession and has paid no ground rent to anyone since his occupation of the land he claims since the year 1953.

The plaintiffs purchased Lot 249 with notice of the defendant's claim and, after unsuccessful attempts to negotiate a settlement with the defendant, they commenced an action against the defendant claiming, *inter alia*, a declaration that they are entitled to possession of the portions of land of which the defendant asserts a squatter's title and for delivery of possession thereof. After a trial which stretched over many months and which occupied nineteen trial days, the trial judge gave